

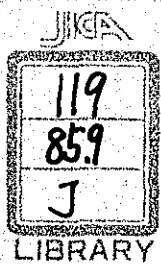
CONSTRUCTION WORKS ON JAPANESE GARDEN
IN JURONG, SINGAPORE

(CONSTRUCTION WORKS ON REST HOUSE, GUEST HOUSE
BRIDGES, SUMMER-HOUSES)

THE PROVISIONS OF THE CONTRACT
FOR UNDERTAKING THE WORKS

JANUARY, 1971

CONSULTANT NAKANE'S GARDENING RESEARCH INSTITUTE



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The Provisions of the Contract for Undertaking the Works

The general rules:

- Article 1 (1) The orderer (hereafter called "A") and the contractor (hereafter called "B") shall carry out this contract with sincerity, cooperating with each other and observing their faith.
- (2) The supervising engineer (hereafter called "C") shall cooperate in order for this contract to be carried out in a smooth way.

Contractor:

- Article 2 (1) B shall perform the works in accordance with these provisions, the plans and specifications (including the explanatory statement to be given at the site; the same is applicable hereafter), the detailed designs, the full-size drawings and the instructions to be given on the basis of them.
- (2) B, after entering into the contract, shall submit the detailed statement of the contract price and the work schedule to C (to A in case C is not installed; the same is applicable hereafter) for approval.
- (3) B shall assume the responsibility in the capacity of an enterpriser or an employer as provided by the Labor Standards Law, Employment Security Law, Laborers' Accidents Compensation and Insurance Law and the other laws and ordinances.
- (4) B or B's field proxy shall be stationed at the site of the works.

Package entrustment or package sub-contract:

- Article 3 B is not authorized to entrust a third party with, or get him to undertake, all or most of the works in a package deal, unless he gets the prior consent in writing of A.

Taking-over of rights and obligations and so forth:

- Article 4 (1) Each of the parties concerned is not authorized to turn over to a third party, or get him to take over, the

rights and obligations arising from this contract, without getting the consent in writing of the other party.

- (2) Each of the parties concerned is not authorized to turn over or loan to a third party the objects of the contract or the building materials inspected, or furnish them for the purpose of mortgage or other securities, without getting the consent in writing of the other party.

Surety:

- Article 5 (1) In case the parties concerned fail to discharge their obligations, the surety shall take the responsibility of guaranteeing against the financial liabilities arising from this contract jointly with the parties concerned.
- (2) When it has become known that the surety cannot discharge his duty, one of the parties concerned may request the other party to change him.

Supervising engineer:

- Article 6 (1) C shall do the following in lieu of A.
- a. Check and approve the detailed statement of the contract price, the work schedule and the other documents indicated in the specification submitted by B.
 - b. Prepare the detailed designs and full-size drawings and so forth necessary for the enforcement of the works on the basis of the plans and specification and hand them to B at an appropriate time according to the work schedule.
 - c. Inspect and approve the detailed drawing of every part of the structure, models and so forth prepared by B.
 - d. Give instructions about and take part in the enforcement of the works as a whole.
 - e. Inspect the building materials and the enforcement of the works and take part in the tests.
 - f. Inspect the finished parts of the works and all the objects of the works completed on the basis of the plans, detailed designs and full-size drawings (these are hereafter called "drawings") and the specifications, and take part in the delivery of them.

- g. Make the technical check over the partial payment bill submitted by B in the light of the prevailing situation of the works.
 - h. Make the technical check over the documents concerning a change of the period of the works or the contract price.
 - i. Engage in the overall coordination between the works and the others related thereto.
- (2) When B has requested a conference, instruction, inspection, investigation, presence, opinion, approval, etc., C shall respond to it immediately.
 - (3) Notifications and conferences about the works between the parties concerned shall take place with C informed of them.
 - (4) C may install his proxy and an overseer approved by A. In this case, he shall notify B in advance.
 - (5) The overseer shall be stationed at the site of the works and exclusively oversee the enforcement of the works in lieu of C.

Field proxy and chief engineer:

Article 7 (1) In case B installs his field proxy, he shall notify A in advance.

(2) The field proxy shall deal with all the matters at the site of the works and be held responsible for them. However, he shall confer with C as to the important matters concerning the operation of the site of the works such as the supervision over the site of the works, safety and sanitation, prevention of accidents and the working hours.

(3) B shall install a chief engineer under the provisions of the laws and ordinances and notify A of it.

(4) The position of both the field proxy and the chief engineer may be held by one person.

Objections over those who are concerned with the works:

Article 8 (1) In case A, after listening to C's opinions, has deemed any of the field proxy, chief engineer, employees, sub-contractors or laborers extremely unfit for the

- enforcement or management of the works, he may request their replacement by citing the reason clearly.
- (2) In case B has found the action of the C's proxy or the overseer extremely inappropriate, he may take exception to C or request his replacement by giving the reason clearly.
 - (3) In case C's action is deemed extremely inappropriate, B may take exception to A.

Building materials and building machines and equipment:

- Article 9
- (1) With regard to the building materials or building machines and equipment, those which have passed C's inspection shall be used, and as to those which should be subject to tests according to the requirements set forth in the specifications, those which have passed the tests shall be used.
 - (2) The expenses which are directly required for the inspection or tests mentioned in the foregoing paragraph shall be borne by B. However, the expenses required for those which are not clearly indicated in the contract or those which are needed specifically shall be borne by A.
 - (3) The materials which have failed to pass the inspection or tests shall be taken back by B according to C's instructions.
 - (4) In case there are any of the building materials whose quality is not specified, those of medium quality shall be used.
 - (5) When the building materials or building machines and equipment brought in the site of the works are carried out of there, it shall be approved by C.

Materials to be furnished and articles to be loaned:

- Article 10
- (1) With regard to the materials to be furnished or the articles to be loaned, those which have passed the inspection or tests in advance shall be provided.
 - (2) In case there are any doubts about the results of the inspection or tests mentioned in the foregoing paragraph, B may request re-inspection or re-tests.

- (3) The day of delivery of the materials to be furnished or articles to be loaned shall be set according to the work schedule, and the place of their delivery shall be the site of the works except as otherwise provided in the specifications.
- (4) B shall be held responsible as a good administrator for the use or safe-keeping of the materials furnished or articles loaned.
- (5) How to use the materials furnished or dispose of the materials left unused shall comply with C's instructions, unless it is stated in the drawings or the specifications.
- (6) The furnished materials not wanted any more (excluding the materials furnished with payment) or the loaned materials already used shall be returned to A immediately at the prearranged place.

Presence:

Article 11 The mixing of the building materials and furnished materials, the works under the water or under the ground and those, when completed, made invisible from outside shall be performed in the presence of C.

Doubts about the plan and changes in the conditions:

Article 12 (1) In each case cited hereunder, B is required to notify C immediately.

a. In case there are doubts about the drawings or specifications.

b. In case the drawings do not match the situation of the site of the works, or in case an unexpected state of affairs has been discovered in the enforcement of the works on the ground and so forth.

c. In case the drawings, specification or C's instructions are deemed inappropriate by B.

(2) Upon receiving the notification mentioned in the foregoing paragraph, C is required to check them immediately and give his instructions to B.

(3) In the case of the foregoing paragraph, when it is found necessary to change the period of the works or the contract price, A, B and C shall confer to make the decision on it.

The enforcement of works failing to conform to the contract:

Article 13 (1) In the enforcement of the works, when there are some parts found failing to conform to the contract, B shall immediately rectify them at his own cost in accordance with C's instructions. B is not authorized to ask for an extension of the period of the works because of it.

(2) With regard to the enforcement of the works which is suspected of failing to conform to the contract, C may break up the parts in question and examine them, when he deems it necessary, after getting A's consent in writing.

(3) As a result of the breaking up mentioned in the foregoing paragraph, when they are found failing to conform to the contract, the expenses required for the breaking-up shall be borne by B, but when they are found conforming to the contract, the expenses required for the breaking-up and the restoration of them shall be borne by A.

(4) B shall not be held responsible for that enforcement of the works failing to conform to the contract which has been caused by one of the following.

a, When brought about by C's instructions.

b. When caused by the nature of the furnished materials, loaned materials or designated materials or designated method of the enforcement.

c. When caused by the building materials which have passed the inspection or tests conducted by C or brought on by the enforcement approved by C.

d. When caused for other reasons attributable to the responsibility of A or C in the enforcement of the works.

(5) Even in the case of the foregoing paragraph, when B has committed an intentional or grave negligence in the enforcement of the works, or when B, knowing that the enforcement was not appropriate, has carried it out without notifying C beforehand, B shall not be exempted from his responsibility.

Prevention of damages:

Article 14 (1) Up until the completion of the works and the delivery of the finished objects of the works, B, at his own cost,

shall provide facilities necessary for the prevention of damages to the objects of the contract, building materials or adjoining structures or a third party. These facilities shall be commensurate with the works and the surroundings and comply with the specification and the laws and ordinances concerned, subject to C's approval.

- (2) The expenses for the facilities for the protection of the structures adjacent to the objects of the contract or others related thereto which are deemed by A, B and C, after their conference, to exceed the limits of the facilities mentioned in the foregoing paragraph and which they deem it inappropriate to include in the contract price shall be borne by A.
- (3) B, when he deems it necessary in particular for the prevention of disaster and so forth, shall take an emergency measure, after asking C's opinion in advance. In great urgency, however, B shall take action and afterwards notify C of it.
- (4) When A or C has requested B for an emergency measure, deeming it necessary, B shall respond to it immediately.
- (5) As to the bearing of the expenses required for the action mentioned in the foregoing paragraph, A, B and C shall confer to take the decision on it.

Damages to a third person:

Article 15 (1) When harm has been done to the life or body of a third person or damage inflicted on his property, etc. or troubles have arisen with him in the course of the enforcement of the works, B shall take charge of the disposition and settlement of them. In case B finds it difficult to settle them by himself, A shall cooperate with B.

- (2) The expenses required for what is mentioned in the foregoing paragraph shall be borne by B, and the period of the works shall not be extended because of it. However, when they have been caused for the reasons which are not attributable to B's responsibility, the expenses shall be borne by A, and B may request an extension of the period of the works, if necessary.

General damages:

Article 16 (1) B shall be held responsible for the damages inflicted upon the objects of the contract, the inspected building materials, furnished materials and loaned articles or the enforcement of the works as a whole before the completion of the works and the delivery of the finished objects of the works, and no extension of the period of the works shall be authorized because of it.

- (2) Of the damages mentioned in the foregoing paragraph, A shall be held responsible for that which has been caused in one of the following cases, and B may request an extension of the period of the works, if necessary.
- a. When the works could not be started on or before the day of commencement owing to the circumstances on the part of A, or when A postponed or suspended the works.
 - b. When a delay in the delivery of the materials to be furnished or the articles to be loaned obliged B to wait to start the works or to suspend the works.
 - c. When a delay in the advance payment or partial payment caused B to fail to start the works or suspend the works.
 - d. For other reasons which are attributable to the responsibility of A or C.

Damages by irresistible forces:

Article 17 (1) When damage has been incurred by natural disaster or other irresistible forces which are not attributable to the responsibility of either A or B to the finished parts of the works or the inspected building materials (including those furnished with payment), B is required to notify A of its situation immediately after it occurred.

- (2) For a serious damage inflicted by the cause mentioned in the foregoing paragraph, A shall be held responsible, so far as it is recognized that B paid such attention as is required of a good administrator, and the amount of damage shall be decided on by A, B and C after their conference.
- (3) In case there is fire insurance or something else that covers the damage, what is left after the insurance has

been deducted from the amount of damage shall be taken as the amount of damage mentioned in the foregoing paragraph.

Insurance against loss:

- Article 18 (1) B shall get the finished parts of the works and the building materials brought in the site of the works insured against fire during the works. Decision shall be made by A and B, after their conference, on the insurance coverage of the furnished materials, loaned articles and so forth.
- (2) In the works of repairs, reconstruction or extension, B need not have the structure and so forth associated with the works insured against fire.
- (3) The date, period, amount, etc. of the fire insurance shall be decided on by A and B, after their conference, and B, immediately upon entering into the contract, shall present the policy to A.
- (4) Decisions shall be made by A and B, after their conference, on the insurance to cover construction works, transportation and others against loss.

Completion and inspection:

- Article 19 (1) B, when he has completed the works, shall request C for inspection, and C shall immediately respond to it and conduct the inspection in the presence of B.
- (2) When the completed works have failed to pass his inspection, B shall do the revamping or reconstructing within the period of the works or the period designated by C and subject them to C's inspection again.
- (3) According to C's instructions and within the period of the works or the period designated by C, B shall remove the temporary installations and take actions of putting things in order and so forth.
- (4) When the actions mentioned in the foregoing paragraph are delayed or when they are not taken without good reason in spite of urging, A shall take them in place of B and may request him to pay the expenses.

Partial use:

- Article 20 (1) Even during the works, A may use part of the objects of the works, after getting B's consent in writing. A shall be held responsible for the safe-keeping of the part.
- (2) When A has inflicted loss on B by the partial use mentioned in the foregoing paragraph, B may request A for compensation for it.

Demand, payment and delivery:

- Article 21 (1) When the completed works have passed the inspection mentioned in Article 19 (1), B shall deliver the objects of the contract to A and at the same time A shall finish the payment of the contract price to B.
- (2) When B asks for partial payment during the works, he shall demand it from A not later than 5 days before the day of payment, after undergoing C's check on its amount.
- (3) With regard to partial payment, B may ask for a payment within the limits of 9 - 10th of that portion of the contract price which is appropriated for the finished parts of the works that have passed C's inspection or the inspected building materials.
- (4) In case advance payment was made when the contract was entered into, the amount to be demanded mentioned in the foregoing paragraph shall be figured out according to the following formula.

$$\text{Amount to be demanded} = \frac{\text{The amount mentioned in (3)} \times \frac{\text{Contract price} - \text{Advance payment}}{\text{Contract price}}}$$

- (5) When the finished part of the objects of the contract has passed the inspection, A may get it delivered by finishing the payment of that portion of the contract price appropriated for that part.

Guarantee against flaws:

- Article 22 (1) The period of guaranteeing the objects of the contract against flaws shall be, from the day of delivery, 1 year for the wooden structures and 2 years for those made of stone, metal or concrete and the like and for the land

construction or for those based upon the works on the ground. In the case of the flaw caused by B's intentional or grave negligence, however, the period shall be 5 year and 10 years, respectively.

- (2) For the flaws in upholstery, furniture, etc., B shall not be held responsible, unless, when it is delivered, C inspects it and immediately requests their revamping or its replacement. For unseen flaws, however, B shall assume the responsibility of guaranteeing against them for 6 months from the day of delivery.
- (3) When the flaws mentioned in the foregoing paragraph have been found, A may request B for their revamping by setting an adequate period of time aside. However, when it requires an excessive cost to revamp the flaws which are not so grave, B may replace it by an appropriate compensation.
- (4) A may request B for compensation for loss instead of the revamping of the flaws or along with the revamping.
- (5) When the flaws have been caused by one of the cases cited in Article 13 (4), B shall not be held responsible for them. However, when they fall under (5) of the same article, he shall not be exempted from his responsibility.
- (6) The provisions of the foregoing each paragraph shall apply with necessary modifications to the destruction or loss of the objects of the contract or damages to them caused by flaws.

Changes in the works and change of the period of the works:

- Article 23
- (1) A may supplement or change the works, when necessary.
 - (2) A may request B to change the period of the works, when necessary.
 - (3) Because of an irresistible force or for other good reason, if any, B may request A to change the period of the works by presenting the reason immediately. The number of days of the works to be changed shall be determined by A, B and C, after their conference.

Change of the contract price:

- Article 24 (1) In each case cited hereunder, one of the parties concerned may request the other party to change the contract price.
- a. When the works have been supplemented or changed.
 - b. When the period of the works has been changed.
 - c. When a change has been made in the items, quantity, of the day or place of delivery of the materials to be furnished or the articles to be loaned.
 - d. When the contract price is deemed evidently inappropriate as a result of a sudden change in the economic situation for an unforeseen extraordinary reason in the course of the works.
 - e. When the period of the works extends over a long period of time (it is fixed at 1 year except it is otherwise provided) or the contract price is deemed evidently inappropriate on account of the changes in the laws and ordinances, commodity prices and wages during that period of the works.
 - f. When the contract price is deemed evidently inappropriate when the suspended works or the works which suffered disaster are carried on.
- (2) When the contract price is changed, A, B and C shall determine the amount, after their conference. However, the amount for the reduced part of the works shall be determined according to the detailed statement of the contract price and that for the increased part according to the current price.

Delay in performance and penalty:

- Article 25 (1) If B is in arrears with the works and unable to complete the works and make the delivery within the period of contract, A may demand from him a penalty within the limits of 1-1,000th of the contract price a day of the delayed days. However, in case a partial delivery has been made within the period of the works, the penalty shall be figured out for what is left after that portion of the contract price appropriated for the part has been deducted from the contract price.

- (2) In case A delays paying the contract price even when B requests him to pay it on the day of delivery, B may request A for a penalty within the limits of 10 'sen' per diem for what is left after the sum of money already received has been deducted from the contract price.
- (3) In case A delays making advance payment or partial payment, B may request A for a penalty within the limit of 10 'sen' per diem for the period of delay.
- (4) In case A is in arrears as mentioned in (2), B may reject to deliver the objects of the contract. In this case, if the objects of the contract have suffered damage even though B took care of them with the same attention as would be paid to his own things, A shall be held responsible for the damage. Also, the expenses specially required for the taking care of the objects of the works until they are delivered shall be borne by A.

A's right to suspend or cancel:

- Article 26
- (1) A may suspend the works or cancel the contract, if necessary. A shall compensate for the loss B may suffer from that action.
 - (2) In each case cited hereunder, A may suspend the works or cancel the contract. In this case, A may request B for compensation for the loss.
 - a. When B fails to set about the works without good reason even though the day of commencement is overdue.
 - b. When it is deemed unlikely for B to complete the works within the period of the works or in due course of time after the deadline in view of the fact that the works lag severely behind the work schedule.
 - c. In case of a violation of Article 3 or Article 13 (1).
 - d. When B fails to respond to the conference provided in Article 24 (2) without good reason and, even though A urges him by setting an adequate period of time aside, he still fails to show his sincerity with which to solve it.
 - e. Besides the foregoing 4 cases, when B violates this contract and it is deemed impossible for him to attain

the objective of this contract due to the violation.

f. When B has proposed to cancel the contract without the reason given in each case cited in Article 27 (2).

B's right to suspend or cancel:

Article 27 (1) In each case cited hereunder, B may suspend the works.

a. When A delays making advance payment or partial payment, and even though B urges him by setting an adequate period of time aside, he still fails to make the payment.

b. When A fails to respond to the conference provided in Article 12 (3), Article 23 (3) or Article 24 (2) without good reason and, even though B urges him by setting an adequate period of time aside, he still fails to show his sincerity with which to solve it.

(2) In each case cited hereunder, B may cancel the contract.

a. When the period of delay or suspension of the works for the reason attributable to the responsibility of A extends over 1-3rd of the period of the works or 2 months.

b. When the contract price has been reduced by 2-3rds because A sharply curtailed the works.

c. When A has violated this contract and it is deemed impossible for B to fulfil the contract because of the violation.

d. When it has become known that A lacks solvency for the contract price.

(3) In the case of the foregoing 2 paragraphs, B may request A for compensation for the loss.

Actions after cancellation:

Article 28 (1) When the contract has been canceled, the finished parts of the works and the inspected building materials (including those furnished with payment) are to be turned over to A, and A, B and C shall confer about them for liquidation.

(2) In the case of the cancellation of the contract which has resulted from the provisions of Article 26 (2), where there is overpayment found after the liquidation, B shall pay back the amount overpaid with interest computed from the day it was paid.

- (3) When the contract has been canceled, A, B and C shall confer and take actions of taking back the things belonging to the parties concerned and of putting things in order, respectively, setting a certain period of time aside.
- (4) When the actions mentioned in the foregoing paragraph are delayed by one party, and even though he is urged, he still fails to take the actions without good reason, the other party shall take them instead and may demand the payment of the expenses.

Settlement of troubles and mediation:

Article 29 (1) In case a trouble has occurred over this contract, both or one of the parties concerned shall either choose a third party approved by the other party and request him to settle the trouble or refer it to the intermediation or arbitration of the Construction Works Trouble Investigation Commission under the Construction Industry Law.

- (2) In case there is no likelihood of the trouble being settled according to the foregoing paragraph, it shall be referred to the mediation of the Construction Works Trouble Investigation Commission under the Construction Industry Law.

Supplementary rule:

Article 30 On the matters which are not provided in this contract, A, B and C shall make decisions, after their conference, if necessary.

